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MAR 24 2004

In re Application of
Ralph F. Kalies
Application No. 10/608,265
Filed: June 27, 2003
Attorney Docket No. 036806.00434

OFFICE OF PETITIONS

ON PETITION

This is in response to the "Petition Under 37 CFR 1.47(b), filed November 24, 2003.

The petition is **DISMISSED**.

Rule 47 applicant is given TWO (2) MONTHS from the mailing date of this decision to reply, correcting the below-noted deficiencies. Any reply should be entitled "Request for Reconsideration of Petition Under 37 CFR 1.47(a)," and should only address the deficiencies noted below, except that the reply may include an oath or declaration executed by the non-signing inventor. **FAILURE TO RESPOND WILL RESULT IN ABANDONMENT OF THE APPLICATION.** Any extensions of time will be governed by 37 CFR 1.136(a).

A grantable petition under 37 CFR 1.47(b) requires:

- (1) proof that the non-signing inventor cannot be reached or refuses to sign the oath or declaration after having been presented with the application papers (specification, claims and drawings);
- (2) an acceptable oath or declaration in compliance with 35 U.S.C. §§ 115 and 116;
- (3) the petition fee;
- (4) a statement of the last known address of the non-signing inventor.
- (5) proof of proprietary interest: and

(6) proof of irreparable damage.

Applicant lacks items (2) and (6) set forth above.

With regard to item (2) noted above, petitioner has not provided an oath or declaration in compliance with 37 CFR 1.64. The oath or declaration submitted June 27, 2003 does not contain an appropriate signature as required by 37 CFR 1.63 and MPEP 409.03(b). MPEP 409.03(b)(A) states:

“The 37 CFR 1.47(b) applicant must make the oath required by 37 CFR 1.63 and 1.64 or 1.175. Where a corporation is the 37 CFR 1.47(b) applicant, an officer (President, Vice-President, Secretary, Treasurer, or Chief Executive Officer) thereof should normally sign the necessary oath or declaration. A corporation may authorize any person, including an attorney or agent registered to practice before the U.S. Patent and Trademark Office, to sign the application oath or declaration on its behalf. Where an oath or declaration is signed by a registered attorney or agent on behalf of a corporation, either proof of the attorney or agent’s authority in the form of a statement signed by an appropriate corporate officer must be submitted, or the attorney or agent may simply state that he or she is authorized to sign on behalf of the corporation. Where the oath or declaration is being signed on behalf of an assignee, see MPEP § 324. An inventor may not authorize another individual to act as his or her agent to sign the application oath or declaration on his or her behalf. *Staeger v. Commissioner*, 189 USPQ 272 (D.D.C. 1976), *In re Striker*, 182 USPQ 507 (Comm’r Pat. 1973). Where an application is executed by one other than the inventor, the declaration required by 37 CFR 1.63 must state the full name, residence, post office address, and citizenship of the nonsigning inventor. Also, the title or position of the person signing must be stated if signing on behalf of a corporation under 37 CFR 1.47(b).”

In view of the above, petitioner must submit a properly executed oath or declaration.

With regard to item (6) noted above, petitioner has not provided proof of irreparable damage. Irreparable damage may be established by a showing (a statement) that a filing date is necessary to preserve the rights of the party or to prevent irreparable damage. Rule 47 status cannot be accorded until such a showing is established.

Further correspondence with respect to this matter should be addressed as follows:

By Mail:

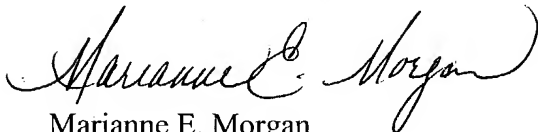
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The centralized facsimile number is **(703) 872-9306**.

Telephone inquiries should be directed to the undersigned at (703) 306-3475.

A handwritten signature in cursive script, reading "Marianne E. Morgan".

Marianne E. Morgan
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy